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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

CHUEN YANG YANG,
Plaintiff and Appellant,

v.

JINGYI WANG et al.,
Defendants and Respondents.

A153039

(Alameda County
Super. Ct. No. RG16802758)

Plaintiff Chuen Yang Yang, appearing in propria persona, appeals from a judgment confirming an arbitration award in favor of defendants Jingyi Wang and Linyun Yu. He challenges both the order compelling arbitration and the denial of his motion to vacate the arbitration award. We conclude the trial court properly ordered the matter to arbitration and confirmed the arbitration award. Accordingly, we shall affirm the judgment.

Factual and Procedural Background

In September 2014, defendants entered into a construction contract with plaintiff for the remodeling of their home in Fremont, California. The contract included an agreement to arbitrate “[a]ny dispute or claim related to or arising from this contract, its performance, breach, interpretation, validity or enforceability . . . before the American Arbitration Association (AAA), utilizing AAA Commercial Arbitration Rules.”

In February 2016, plaintiff filed the present action seeking damages for, among other things, breach of contract. In response, homeowners filed a cross-complaint for damages and also successfully petitioned to compel arbitration of the dispute.

The arbitrator awarded defendants \$39,885 in damages. The arbitrator found that plaintiff owed defendants \$54,585 in damages (\$27,825 for construction repairs and \$26,760 in liquidated damages for delay) but that defendants owed plaintiff \$14,700 on his counter-claim. The arbitrator's final award also directs plaintiff to pay defendants the additional sum of \$17,096 in arbitration costs (\$7,000 in fees to the American Arbitration Association and \$14,146 to the arbitrator, less amounts previously paid by plaintiff).

Thereafter, plaintiff filed a petition to vacate the arbitration award and defendants filed a competing motion to confirm the award. The trial court denied the petition to vacate and entered judgment confirming the arbitration award. Plaintiff timely filed a notice of appeal.

Discussion

1. *The trial court did not err in granting defendants' petition to compel arbitration.*

Plaintiff contends the arbitration agreement is not enforceable because the contract was drafted by defendant Yu, who is not an attorney, and because it failed to comply with Business and Professions Code section 7191, which sets forth the requirements for arbitration agreements contained in certain residential construction contracts.¹ Plaintiff

¹ Business and Professions Code section 7191 reads in relevant part: "(a) If a contract for work on residential property with four or fewer units contains a provision for arbitration of a dispute between the principals in the transaction, the provision shall be clearly titled 'ARBITRATION OF DISPUTES.' [¶] If a provision for arbitration is included in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters. [¶] (b) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a), and immediately following that arbitration provision, the following shall appear: [¶] 'NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER

concedes that these arguments were not previously raised either in the trial court or in the arbitration but argues nonetheless that this court should exercise its discretion to consider them because of the “important issues of public policy.” While defendants are undoubtedly correct that plaintiff has waived these arguments, it is equally efficient to reject the arguments on the merits.

Plaintiff asserts that Yu engaged in the unauthorized practice of law by “drafting” the contract then advising his wife Wang to present it to plaintiff to sign. The record establishes, however, that Yu did not “draft” the agreement but rather, he used a template found on the internet. Plaintiff does not have standing to challenge any advice Yu may have given Wang regarding the contract and merely presenting the contract for his signature does not amount to providing legal advice. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [The “decisive element” in determining whether conduct amounts to the practice of law is whether “the application of legal knowledge and technique is required.”].)

Likewise, contrary to plaintiff’s argument, the failure of the contract to comply with the requirements of Business and Professions Code section 7191 does not render the agreement “per se unenforceable.” Section 7191 is designed to protect the homeowner, not the licensed contractor. (*Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, 210-211 [Under section 7191 subdivision (c), a contract for work on a residential property that does not comply with the statute may not be enforced against “*any person other than the licensee.*”]; 12 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 45:12 [“A failure to comply with [section 7191] requirement renders the arbitration provision unenforceable against any person other than the contractor.”].) Nothing in Business and Professions

THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.” “WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.” [¶] If the above provision is included in a printed contract, it shall be set out either in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.”

Code section 7191 precludes defendants, the homeowners, from enforcing the arbitration agreement against plaintiff, the licensed contractor.

2. *The trial court did not err in confirming the arbitration award.*

Plaintiff moved to vacate the arbitration award under Code of Civil Procedure section 1286.2, subdivision (a)(4), on the ground that the arbitrator exceeded his powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.² In *Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775-776, the court confirmed its holding in *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 that “arbitrators do not ‘exceed[] their powers’ within the meaning of section 1286.2, . . . merely by rendering an erroneous decision on a legal or factual issue, so long as the issue was within the scope of the controversy submitted to the arbitrators. ‘The arbitrator’s resolution of these issues is what the parties bargained for in the arbitration agreement.’ ”

Plaintiff contends the arbitrator exceeded the scope of his authority by determining that he should bear the costs of arbitration because the construction contract does not contain an express costs provision. The parties expressly agreed, however, that arbitration would be governed by the AAA Commercial Arbitration Rules and rule 47, subdivision (c), expressly directs the arbitrator to “assess the fees, expenses, and compensation provided in [rules 53, 54, and 55]” and gives the arbitrator discretion to “apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.” Having submitted the allocation of costs to arbitration, plaintiff cannot maintain the arbitrator exceeded his power by deciding it, even if, as plaintiff argues, he decided it incorrectly.

Plaintiff also contends that the liquidated damages provision in the contract was unreasonable and unenforceable because its enforcement would constitute a penalty

² Plaintiff’s petition also sought to vacate the award on the grounds that it was obtained by corruption, fraud or other unfair means (§ 1286.2, subd. (a)(1)) and the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute (§ 1286.2, subd. (a)(5)). Plaintiff has not made any arguments with respect to these grounds on appeal.

rather than an approximation of actual damages. The liquidated damages awarded by the arbitrator were clearly authorized by the contract and the validity of the contract provision was vigorously argued before the arbitrator. Accordingly, plaintiff's challenge to the enforceability of the provision is not a proper basis on which to vacate the award.

Accordingly, we find no error in the denial of plaintiff's motion to vacate.

Disposition

The judgment confirming the arbitration award is affirmed. Defendants' motion for sanctions is denied.

Pollak, P.J.

We concur:

Streeter, J.
Brown, J.